THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 4309 of 2002

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DATED: 03-02-2006

PACHINILAM Venkata Ramana & 3 others.

..... PETITIONERS

AND

The Land Acquisition Officer &

Revenue Divisional Officer,

Kakinada, East Godavari District & another.

.....RESPONDENTS

ORDER:

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This Writ Petition has been filed by the petitioners, who are four in number, assailing the action of the respondents in rejecting the application filed by them under Section 28(A) of the Land Acquisition Act, 1894 (for brevity, 'the Act').

2. Petitioners are the owners and possessors of the land bearing S.Nos.192/1B, 192/1A and 192/1AP. Their lands along with some other lands came to be acquired under Award No.5/91 dated 30-04-1991. Some of the land-losers sought reference to the civil Court under Section 18 of the Act. Accordingly, reference was made and the civil Court fixed compensation at Rs.91,350/- per acre by order dated 30-9-1999. Thereafter, the petitioners filed an application under Section 28(A) of the Act on 23-10-1999 for re-determination of the amount of compensation on the basis of the order passed by the civil Court. Their application came to be rejected by the

respondents on the ground of not enclosing a certified copy of the Award or the judgment of the civil Court.

3. The endorsement under which the application filed by the petitioners came to be rejected reads as follows:

> "*The above application is rejected due to the following defects.*
>
> *The applicant has filed his application without certified copy of Award or judgment of the Court.*
>
> *Hence the application was not considered U/s 28(a) of the L.A.Act".*

Assailing the said endorsement petitioners filed this Writ Petition.

4. Respondents filed counter affidavit. It is stated in the counter affidavit that the application filed by the petitioners through their counsel does not constitute any valid application as contemplated under Section 28(A) of the Act. Para.3 of the counter affidavit reads thus:

> *In reply to the averments made in paras.2 to 6 of the petitioners' affidavit it is submitted that it is true that the lands belonging to the petitioners situated in Thammavaram village of Kakinada Rural Mandal have been acquired under Award No.5/91 dated 30-04-1991. It is also true that the land belongs to Sri Gollapalli Venkata Suryarao situated at Vakalapudi village has also been acquired under the same notification and he has been awarded with enhanced compensation in O.P.No.21/92 in the Court of the Principal Senior Civil Judge, Kakinada on*
> *30-09-1999. Quoting the same, Sri M.V.J.Ramagopal, Advocate, filed applications on behalf of the petitioners stating as follows:*
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> *"Application filed by the claimant through Sri M.V.J.Ramagopal,Advocate, Kakinada, under Section 28(a) of the Land Acquisition Act."*
>
> 1. *The claimant submits that he is the owner of the land covered by Sy.Nos.192/1A, 192/1B (P.Venkataramana of an extent of Ac.0-09 cents, Ac.1-80 cents of Thammavaram village covered by Award No.5 of 1991. Recently the Principal Senior Civil Judge, fixed compensation for the acquired land at the rate of Rs.91,350/- per acre. Thus the claimant is also entitled to compensation at the rate of Rs.91,350/- per acre with 30% solatium, 12% Additional market value and interest at 9% for the 1st one year and for the remaining years till date of*

payment at 15% p.a.

2. *The claimant submits that he may be paid the compensation after deducting the payment already made under Section 28(a). Xerox copy of the decree is herewith enclosed relating to the Award No.5/91"*

5. Heard the learned counsel for the petitioners and the learned Government pleader for Land Acquisition appearing for the respondents.

6. Learned counsel for the petitioners submits that the petitioners filed application under Section 28(A) of the Act through their counsel for re-determination of the amount of compensation on the basis of the award of the civil Court and that the rejection of the said application by the respondents under the endorsement impugned in the Writ Petition is wholly unjustified.

7. Learned Government pleader for Land Acquisition submits that the application filed by the petitioners through their counsel is not a valid application within the meaning of Section 28(A) of the Act. Therefore, the respondents are justified in rejecting the said application.

8. Under Section 28(A) of the Act, an application for re-determination of the amount of compensation is required to be filed before the District Collector within three months from the date of award of the civil Court.

9. The contention of the learned Government Pleader for Land Acquisition is that the application filed by the petitioners cannot be considered as a valid application within the meaning of Section 28(a) of the Act. It is to be noted that the respondents rejected the application not on the ground that the application filed by the petitioners does not constitute a valid application within the meaning of Section 28(a) of the Act, but the application of the petitioners came to be rejected on the ground that they did not enclose a copy of the judgment. The ground of rejection is wholly unsustainable and therefore in my view, the endorsement issued by the respondents is arbitrary and illegal.

10. In the result, the Writ Petition is allowed setting aside the endorsement bearing Ref.SDC/LA/APIIC/3/2000 and directing the respondents to consider the application of the petitioners filed under Section 28(A) of the Act in accordance with the provisions of the Act and pass appropriate orders. No order as to costs.

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(B.SESHASAYANA REDDY,J)

3rd February, 2006.

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